

***7 Official Opinions of the Compliance Board 142 (2011)***

**Closed Session Procedures – Written Statement – Practices permitted**

**Exceptions Permitting Closed Sessions – Personnel, §10-508(a)(1) – With exception, discussion of: appointment of specifically identifiable employee**

**Exceptions Permitting Closed Sessions – Legal Advice – §10-508(a)(7) – Within exception**

**Compliance Board – Authority and Procedures – Disclosure of action taken in closed session – not prohibited by Act**

April 21, 2011

*Complaint:*

*Dr. Douglas E. Edwards*

*Respondent:*

*Prince George's County Council*

The Open Meetings Compliance Board has considered the complaint of Dr. Douglas E. Edwards (“Complainant”) that the Prince George’s County Council (“Council”) violated the Open Meetings Act (the “Act”) and other laws on December 7, 2010 with respect to its decision in a closed session that Council Member Leslie E. Johnson would not be appointed to any committees. We have also considered the Council’s response and exhibits.

For the reasons stated below, we conclude that the Council did not violate the Act. We lack the authority to address the allegations that the Council violated other laws.

**I**

**Facts and contentions**

On December 7, 2010, the Prince George’s County Council met to elect its officers and discuss committee assignments for the 2011 legislative year. Under the Council’s Rules of Procedure (“Council Rules”), the Council elects its officers, while the Council committees “shall be appointed by the Chairman upon the advice and consent of a majority of the full Council.” The Council elected its Chair and Vice Chair in open session. It then unanimously approved a written “Motion for a closed session.” The motion states that the

purpose of the closed meeting was “To discuss personnel issues in accordance with Section 10-508(a)(1) State Government [“SG”] Article, and to consult with legal counsel in accordance with Section 10-508 (a)(7) ..., Annotated Code of Maryland.” The “Topics to be discussed” were “To discuss specific committee assignments for the upcoming legislative year and to consult with legal counsel to receive advice on the scope of councilmanic authority within County and State law.”

The open-session minutes of the December 7 meeting reflect counsel’s presence at the closed session and describe the matters addressed there:

Discussion of specific committee assignments for the upcoming legislative year; Counsel provided legal advice on the scope of councilmanic authority within County and State law. Discussion of scope of councilmanic authority to make appointments. Discussion of Committee assignments for Council Member Johnson. Approved the following assignments: Council Member Johnson will have no Committee assignments; the full Council to take a more active role in District six development projects and throughout the County; Council Member Johnson will not represent the Council to any external bodies.

We have reviewed the minutes of the closed session. They do not suggest that the Council discussed or acted on other matters.

The Council issued a press release later on the day of the meeting. The press release announced the committee assignments made that day and reported on statements made by the Chair during a press conference after the Council session. According to the press release, the Chair “said the Council had reached a decision on the role Council Member Leslie Johnson (D) – District 6, will have in legislative year 2011.” As quoted in the press release, the Chair further stated:

While Mrs. Johnson is under federal charges the Council is proceeding with an abundance of caution by taking the following measures to ensure the effectiveness of this body and to avoid any appearance of impropriety. Mrs. Johnson will have no committee assignments; the full Council will take a more active role in development projects in District 6 and throughout all of Prince George’s County; and she will not officially represent the County Council to any external bodies.

The press release also reported the Council’s election of officers.

Complainant asserts that the Council “failed to provide accurate information to the general public on the specific nature and purpose for the closed meeting,” that the Council’s “actions were not sealed as required, but disclosed during a press conference,” that “the information provided in the press release is not consistent with the stated purpose for the meeting...,” and that the “action taken during the [closed session] should be declared invalid.” Complainant additionally contends that the Council’s action “prevents Mrs. Johnson from representing the residents of district 6” in violation of the County Charter. Complainant’s attachments show that he has communicated to the Council his concern that Council Member Johnson’s inability to serve on committees will have a negative impact on the district.

The Council responds that the “discussion of committee assignments for Council Member Johnson [fell] squarely within...Section 10-508(a)(1) of the Act,” that the Act does not prohibit the public disclosure of actions taken in a closed session, and that this Board lacks the authority to address the alleged violations of the County Charter.<sup>1</sup>

## **II**

### **Discussion**

We begin with the allegation that the Council’s motion to close (“closing statement”) did not accurately disclose “the specific nature and purpose” of the closed session. That allegation raises the issues of whether the closing statement was sufficiently detailed, whether it was accurate, and whether the discussion fell within the exceptions claimed.

With respect to the level of detail in the closing statement, a public body need not disclose the names of the individuals to be discussed in a session closed under the exception for personnel matters. *See, e.g., 6 OMCB Opinions*

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<sup>1</sup> The Council does not claim that it was merely performing an “administrative function” excluded from most provisions of the Act when it discussed committee assignments. However, we note that we have explained that the “process by which a public body itself makes an appointment, as distinct from the process of considering the confirmation of an appointment by someone else, constitutes an [administrative] function.” *3 OMCB Opinions* 182, 186, n.7 (2002). Thus, in *1 OMCB Opinions* 252 (1997), we concluded that a mayor and town council were performing an administrative function when they filled a vacancy on the council, because they were merely administering their own regulations. Here, if the Council was simply performing its role under its rules of providing “advice” to the Chair on committee appointments, it was likely performing an administrative function. The closed minutes are not clear on this point.

127,136 (2009). With respect to accuracy, it is apparent from our review of the closed-session minutes that the Council's description of the "topics to be discussed" turned out to be correct. Thus, the closing statement was sufficient under the Act. We proceed to whether the matters discussed during the closed session fell within the claimed exceptions for personnel matters and legal advice.

SG §10-508(a) lists fourteen topics of discussion that a public body may discuss in closed session. The first such topic claimed by the Council was the "personnel matters" exception. Under that exception, a public body may meet in closed session to discuss:

- (i) the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of appointees, employees, or officials over whom it has jurisdiction; or
- (ii) any other personnel matter that affects 1 or more specific individuals.

SG §10-508(a)(1).

The Council also claimed the "legal advice" exception, which permits a public body to "consult with counsel to obtain legal advice." SG §10-508(7).

The Act does not permit us to interpret the exceptions broadly. SG §10-508(b) provides that a public body that meets in closed session to discuss an excepted topic "may not discuss or act on any matter" not permitted by the exception it claimed. Further, SG §10-508(c) requires us to construe the exceptions "strictly" and "in favor of open meetings...." Accordingly, the personnel exception permits closed-session discussions concerning specifically-identifiable individuals, but not to permit policy deliberations pertaining to an entire class. *See, e.g., 4 OMCB Opinions* 38,40 (2004) (finding that the exception permitted a closed-session discussion about five individuals' salaries). Similarly, a public body "may not use the 'legal advice' exception as a mask for policy deliberations." 1 *OMCB Opinions* 145, 149 (1995).

To apply these principles to Complainant's allegations, we have examined the closed-session minutes to determine whether the Council's actions with respect to Council Member Johnson could be deemed "policy deliberations" applicable to a broad class, as opposed to the discussion of the "appointment" of "appointees ... over whom it has jurisdiction." SG §10-508(a)(1). The

minutes do not reflect policy deliberations. For instance, the Council did not address possible changes to its Rules of Procedure, which govern committee appointments and Council members' duties. We also examined the Rules of Procedure, in their entirety, to discern whether the Council's various actions with respect to Council Member Johnson could be deemed a *de facto* amendment of those Rules. Again, we do not find that the discussions strayed into policy matters. It appears that the Council properly confined its closed meeting to its attorney's advice on councilmanic authority with respect to committee appointments and other matters and to its own discussion and action on matters pertaining to the appointment of a specific individual to committees subject to the Council's governance.<sup>2</sup> We turn to whether the Council violated the Act by disclosing its closed-session actions to the public.

Two provisions of the Act govern a public body's disclosure of matters discussed in closed session. First, SG §10-509(c)(2) requires the public body to include various items in its minutes for the next open session, including "a listing of the topics of discussion, persons present, and each action taken during the session." The Council's public disclosure of its actions did not violate this section. Second, SG §10-509(c)(4) requires a public body to keep the minutes of a closed session sealed and not "open to public inspection" unless the public body votes otherwise or other events, not relevant here, occur. The Council did not produce its closed-session minutes at the press conference and did not violate this provision.

Finally, we turn to the allegations that the Council's various actions with regard to Council Member Johnson should be declared invalid as violative of both the Act and the County Charter. We lack the authority to either grant such redress or address alleged violations of laws other than the Act itself. While our duties include issuing opinions as to whether a violation of the Act has occurred, SG §10-502.4, the enforcement of the Act through injunctive or other relief lies with the appropriate circuit court. SG §10-510. No provision of the Act authorizes us to examine whether a public body has violated other laws.

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<sup>2</sup> The Council's decision on which Council members would communicate to other entities on the Council's behalf falls into the administrative exclusion, which applies to a public body's internal "housekeeping" matters. *Cf. 1 OMCB Opinions* 233, 236 (1997) (applying the exclusion to the members' discussion of procedures governing their public expression of private views because it involved their "internal operating methods" concerning the body's responsibility to express the town's positions).

**III**

**Conclusion**

We conclude that the Prince George's County Council did not violate the Open Meetings Act with respect to the closed session it held on December 7, 2010.

OPEN MEETINGS COMPLIANCE BOARD

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